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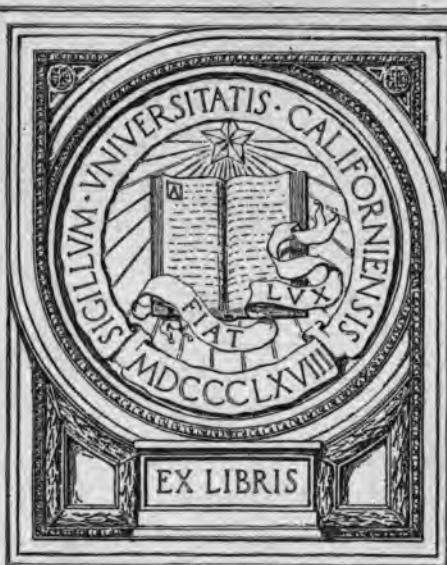
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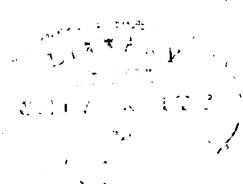


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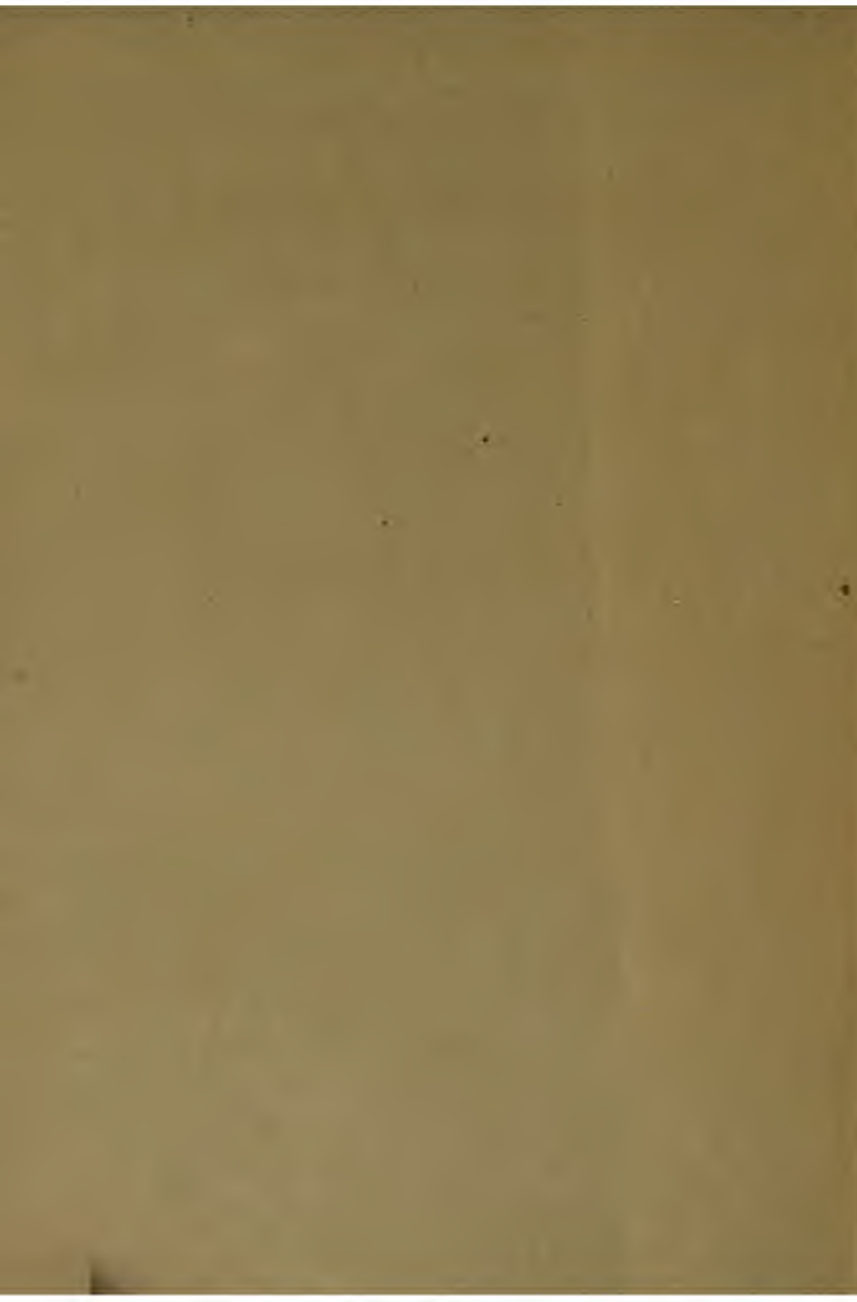
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Laying the Rails for Future Business

**With a Synopsis of the Law
for the
Federal Control of Railroads**



**Guaranty Trust Company
of New York**



Laying the Rails for Future Business

ADDRESS:

By Francis H. Sisson, Vice-President of the Guaranty Trust Company of New
York, before the Annual Meeting of the Chamber of Commerce
of the United States, at Chicago, April 11, 1918

With a Synopsis of the Law
for the
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Laying the Rails for Future Business

IT SEEMS too obvious to require repetition, yet apparently the fact is still little understood that the efficiency and adequacy of the arteries largely determine the health of the body.

For a period of thirty years, with an increasing intensity of action, this country has pursued the policy of constriction and starvation towards its arteries of commerce, through which the life blood of the body economic must flow. Sclerosis and paralysis inevitably followed. In striking proof of the folly of this treatment, when the necessities of war force the Government to take over the care of this ailing patient all the nostrums, quack remedies and prescriptions of the years are thrown out of the windows and a complete change of treatment is prescribed.

This new treatment has general approval for the conditions of today, but what of tomorrow? That is the question which the business men of the United States must face and answer if this country is to achieve its oft-described "manifest destiny."

The present government control of the railroads, while representing a progressive step, cannot be considered as offering a solution of the transportation problem; it is a temporary and extreme measure,

forced by the exigencies of a great crisis for which there had been no preparation.

Reaping the Harvest

The incalculable importance of the railroads in every phase of our individual and national existence was dramatically, I might even say tragically, demonstrated last winter, when the grim spectres of cold, hunger and want stalked in the wake of transportation paralysis. Never before in our history have we so thoroughly appreciated the importance of distribution as an economic factor. It is to be hoped that we will never forget this costly experience.

The demands of war, sudden and colossal as they are, have not been responsible for this deplorable state of affairs; they merely accelerated and accentuated the inevitable result which would have come sooner or later under existing conditions. We are simply reaping the harvest of a decade of railroad baiting born of ignorance, prejudice and political expediency, which, as a people, we did not understand, and the consequences of which we did not anticipate.

The Shackled Giant

Punishment visited on the many for the sins of the few, the reduction and limitation of rates, the multiplication of regulations and regulating bodies, the increase of taxes and impositions, the rising costs of

labor and material, have for the last ten years added new bonds to bind this modern Gulliver of ours, until he lay helpless, the victim of those he should live to serve. The strong hand of the Government, in taking over the railroad situation, has released many of these shackles, and by coördinating direction and operation is restoring that ability to serve which had been denied the achievement of its purpose.

Preparing for the Future

But the foundations for the unprecedented economic struggle which inevitably will follow the present armed conflict must be laid now. We were woefully unprepared for war; we dare not be equally unready for peace. And one of the chief factors in preparing for the future unquestionably is that of railway extension, for the carriers will play as important a part in helping to win the battles of the prospective international combat in trade fields as they are today in speeding our military strength to the battle-line of freedom for the victory which democracy must and will win.

Are these great weapons in our commercial warfare to be privately or publicly owned and operated? Why have they not been equal to the occasion and how can they be made so? Can preparations for the future be made in the light of the past?

In recent years we have lost sight of the great influence which the railroads have exerted in the

development of this country, and we have forgotten that our great resources are far from fully developed. But now, as we face humanity's arch enemy and as we watch the burdens of financing our share of the war mount day by day, we are coming to understand that we shall have ample use for all our resources, all our productivity, all our distributive facilities. We must create new wealth to meet the destruction of the old.

Construction and Improvement Retarded

We are beginning to comprehend the significance of the prophecy of that astute and far-seeing railway executive, the late James J. Hill, who in a now famous letter to the Governor of Minnesota in January, 1907, predicted that American railroads would need to expend at least \$1,100,000,000 annually on construction and improvements for the succeeding five years if they would competently handle the business of the country.

According to Mr. Hill's estimate, then, \$5,500,000,000 ought to have been spent in the five years between 1907 and 1912. As a matter of fact, only a little more than \$5,100,000,000, according to property investment figures of the Interstate Commerce Commission, was put into the roads during the ten years from 1906 to 1916. And the cost of road and equipment rose from \$12,400,000,000 in 1906 to \$17,500,000,000 in 1916, or about 40 per cent. Yet,

brought railroad development practically to a standstill until 1886, and in the three years, 1886, 1887 and 1888 a total of 26,000 miles of railroads was built.

Ten Years of Inactivity

Through several panic years the period from 1890 to 1900 was a time of inactivity in railroad construction. Furthermore, the main trunk lines and the principal systems had been built, and the only demand for new construction in any part of the country consisted of branch and subsidiary lines.

The low water mark in railroad extension for this period was reached in 1897, when only 1,600 miles of road were built in the entire United States. During the period of depression from 1893 to 1897, an average of less than 2,000 miles was built annually.

The year 1900 marked an upward trend in railroad construction, and also in business conditions. The forming of large combinations of industry was begun, and the period of this activity continued up to the panic of 1907, which checked active construction.

From 1907 to 1914 the country was recovering from the effects of the panic of 1907. In 1913, and the beginning of 1914, there was another serious depression, which many financial leaders thought was a sure sign of an approaching panic. Within

a few months after the outbreak of the European War, however, there was an improvement in general business conditions and a remarkable expansion of the commerce of the country.

Growing Needs Not Met

But in the face of this rapidly growing need we find the figures of railway extension dropping to 1,532 miles in 1914, 933 miles in 1915 (the lowest for any year since the Civil War), 1,098 miles in 1916 and 979 miles in 1917.

The railroads had not kept pace with the growth of the country and could not bear the added burdens of war. Lack of credit born of governmental regulation had wrought this finish. The decline of railroad credit following the enactment of the Hepburn Act and the amendment giving the Interstate Commerce Commission power to suspend rates was continued with deadly certainty. Rates moved ever downward, expenses piled ever upward, uneconomic laws and multiplied regulations consumed revenues. Banks and investors looked elsewhere and the unremitting conflict of the public wrought its own undoing. Now the Government has stepped in to assume the burden of its own creation. What next?

Must Restore Railway Credit

It is certain, if we are to have private ownership of transportation, the cornerstone of the foundation

of our future facilities must be the restoration of railway credit. The companies must be enabled to raise the means to develop those much needed facilities adequately. The folly of the Government's attitude toward the railroads in the past has been strikingly exemplified in the policy of restricting the earnings of the roads without any guarantee of return to them. Naturally, the result was to undermine railway credit and to rob the companies of the only source at their disposal for increasing their services to the public.

The increase in the population of the country in the ten years from 1908 to 1916 was a little less than 20 per cent. A commensurate increase in commercial and industrial activity to meet this growth and the new conditions we face will require a proportionate increase of ton mileage per capita which can only be made possible by an increase in railroad trackage. Such extension can be made possible only with private capital, which will not be attracted to the railroad field until that field is put on a par with others.

Low Returns on Capital

This situation is made clear when we consider that since 1890 the rate of return on capital invested in our railways ranged from 3.35 per cent. to 5.83 per cent. in 1907. Even in 1916 the return was but 5.80 per cent., and in 1917, it is estimated by

the Bureau of Railway Economics, it was only 5.72 per cent.

On capital invested in manufactures in this country 17.12 per cent. was earned in 1900, 13.06 per cent in 1905, and 12.04 per cent. in 1910, while a much larger yield was enjoyed in 1916 and in 1917. Testimony was adduced before the Newlands Committee of Inquiry which showed that the ten-year average return on railway stocks was only 4.6 per cent., as compared with 10.9 per cent. on national bank stock, 14.5 and 18 per cent. on sugar stocks, 16 per cent. on zinc mining stock, 16 per cent. on machinery and manufacturing stock, 18 per cent. on steamship company stock, 20 per cent. on petroleum company stock, and 48 and 50 per cent. on copper mining company stocks.

The Logical Consequences

Keeping in mind the constantly increasing costs of labor and materials, it is not to be wondered at, therefore, that while the railroads ordered 151,711 freight cars in 1907, they were able to purchase only 79,367 in 1917; that while they bought 3,482 locomotives in 1907, they could acquire only 2,704 in 1917; that the number of new lines built in the three years ending with 1917 was 80.2 per cent. less than in the three years ending with 1907; that the number of freight cars ordered was 55.8 per cent.

less, and that the number of locomotives ordered was 53.1 per cent. less.

With the confidence of investors in the railroad business destroyed, this curtailment of equipment and extensions was logically to be expected regardless of how much it should have been prevented and was deplored when last winter's crisis came.

Need of Intensive Development

The demands of war must be met at whatever price they exact, and there is no doubt that the Government will proceed as far and as rapidly as possible to meet them. It is imperative to do so. But one cannot help thinking of the incalculable advantage which the Government would have at present in speeding up our martial activities if the roads had been allowed sufficient return on the capital invested in them to have made the proper extensions and to have provided the necessary equipment. Money, materials and men which now could be devoted to the production of munitions will have to be allocated to the improvement of our transportation facilities. And every productive resource, every minute is precious.

But this unfortunate state of affairs should have a beneficial effect. It ought to impress upon us the need for wiser provisions, particularly with reference to intensive development in order to cope with the problems which will be created as soon as peace is declared.

Room for Growth

How sorely such development is wanted may be obtained from the fact that on the average there are only 8.55 miles of railroad for every 100 square miles of our country. New Jersey has 31.11 miles of railroads per hundred square miles of territory; Pennsylvania, 25.95; Ohio, 22.39; Illinois, 21.67; Connecticut, 20.74; Indiana, 20.74; Delaware, 17.05; Maine, only 7.57; North Dakota, 7.52; Texas, 6.05; Montana, 3.32; Oregon, 3.21; Utah, 2.60; New Mexico, 2.48; Nevada, 2.11, and Wyoming, the least of all, 1.95.

It may be well to quote here a few brief but very pertinent extracts from the testimony of Mr. Alfred P. Thom, counsel to the Railroad Executives' Committee, in the hearings before the Joint Congressional Committee on Interstate and Foreign Commerce in November, 1916.

"The railroads must go on growing as the days go and as human genius grows and human interest grows," declared Mr. Thom. "They must go on growing and keep pace with the rest of the world, or you put the hand of paralysis upon the people who must have those accommodations or die. They will have to be provided.

How Shall Needs be Met?

"How is this increased transportation facility, this constant growth in transportation facility, to

be provided?" Mr. Thom asked. "Is there anyone who dreams that it can be supplied out of earnings? Is there any man of affairs anywhere who believes that you can continue to build the needed transportation facilities out of earnings? If so, he needs to open his eyes, because that is not even a remote possibility. It is impossible to build, to renew, to extend, to amplify, and to increase the transportation facilities of this country without the constant input of new money."

As conditions in 1916 forecast the needs of the railroads, Mr. Thom estimated that during the succeeding ten years approximately twelve hundred and fifty millions of dollars a year would be required, in order not to constrict the business and productive energies of the country and in order to supply them adequately with the facilities which they will increasingly demand. This estimate does not include the money needed for refunding maturing debts, which Mr. Thom placed at \$250,000,000 a year, so that the total requirements of the railroads for new money during the decade of 1916 to 1926 would, on this basis, be a billion and a half dollars a year.

The Development of Great Areas

Unless the Government's future policy toward the railroads is such as to insure fair regulations and just returns, which will be absolutely essential if new capital in sufficient quantity is to be attracted

to the extension of our transportation facilities, the development of our great resources in the West, Northwest and Southwest will be arrested. And the retarding of such development now, of all times, would be a national economic disaster.

The Rocky Mountain and the Pacific Coast sections, for instance, have more than two trillion four hundred and twenty-seven billion tons of coal, according to the estimate of the United States Geological Survey. In addition, there are large and important oil fields and almost inexhaustible deposits of oil bearing shale which may be used in the future for manufacturing oil.

Electrical Energy

The water power of these territories is estimated at a minimum of 23,000,000 and a maximum of 44,000,000 horsepower as compared with a total of 32,000,000 horsepower for the whole manufacturing industry of the United States in 1914. The war has taught us the value and use of electrical energy and it is more than probable that our vast, unworked water power will become the basis of a new and important industrial life in the Western States.

There are large untilled areas of farm lands awaiting cultivation in this country. The large areas of virgin forest and untouched mineral resources in our Western States will be worked in the near future. With the development of the enormous resources of

Alaska, and the growth of our trade with the Orient, a tremendous expansion in these States is bound to occur, and that will occasion railway extensions as well as an intensive development of existing mileage.

Railroad Needs in the South

The sixteen Southern States, with a population of more than 33,000,000, in 1916 had a railroad mileage of 92,128, or about eleven miles of road for every 100 square miles of territory. But the industrial development they are destined to enjoy as their large variety of natural resources and great possibilities are made available will require an intensive and extensive development of their transportation facilities. Not only are these States rapidly becoming the predominant cotton manufacturing section, but in recent years they have furnished more than 50 per cent. of the lumber produced in the United States and contain about half of the country's iron ore deposits. The total capital invested in manufacturing industries in the Southern States, it is significant to note, increased from \$1,971,000,000 in 1904 to \$3,456,000,000 in 1914, and the value of their products increased from \$2,333,000,000 to \$3,730,000,000 in the same decade. These facts and figures certainly provide sufficient evidence of the forthcoming need for a widespread extension of our railway net south of the Mason and Dixon Line.

Central and Eastern States

In the large industrial section of the country east of the Mississippi River and north of the Potomac River, the density of our railway network is the greatest. In such industrial States as Ohio there has been little actual increase in the railway mileage as measured per 100 square miles of territory since 1896, but there has been an intensive development of the railways in double tracking and sidings and improvements of facilities. Unfortunately, figures published by the Interstate Commerce Commission do not give the amount of intensive development of mileage of various States, but it is quite safe to assume that the major portion of every 100,000 miles of extra tracks and sidings built since 1906 has been constructed in central and eastern regions. Here are the centers for the distribution of our products. Here has been the greatest expansion of industry during the war, and here the pressure upon the railway system of the country has been the heaviest.

With the development of our trade and industry after the war, there ought to be a great deal of railway extension in this territory, particularly double tracking and improved terminals.

During the remainder of the war, the Government and industry will not be able to spare the productive energy to make these extensions. At best there will be an increase in the amount of equipment, and

a coördination of railway lines and of terminal facilities will undoubtedly increase the ability of the railway system to carry a larger amount of traffic.

Under-maintenance of the existing roads is likely to be the characteristic feature of the operation of the railroads during the war, and it will mean that on the return of peace American railways will have to put a great deal of money into improvements and betterments and into extensions of the lines in order to catch up to the demands of the business of the country. It is roughly estimated that for every dollar of increased gross return, \$5 should be spent in extensions and improvements.

The Maintenance of the Roads

Construction work of any character at the present time would draw money, materials and labor from the more pressing and immediate needs of war. But we can and should plan for them at the earliest possible moment, and in the meantime we should make adequate provision for the maintenance of the roads, for unless the roads are properly maintained, new extensions would be almost futile.

Such provision cannot be made alone upon a computation of costs for maintenance during the three years ending June 30, 1917, the period specified as the basis of financial readjustments in connection with Government control of the railroads for the duration of the war. The reason becomes patent

immediately, if we remember that today the purchasing power of a dollar is about 60 per cent. of what it was in those years, while the cost of labor has steadily risen and the prices of materials have advanced 75 per cent. or more, in the last three years. Consequently the only fair basis for determining the allowance to be made for maintenance is that of prevailing prices. The year 1917 not only showed a reduction in net revenue of \$133,000,000 in spite of an increased gross return, but an even greater decrease in effect because of the lessened value of money as a token of exchange. For instance the average earnings of the period 1915-1917 which cover the Government's guarantee will at present prices have a purchasing power of only about 65 per cent. of the average period from 1910-1913.

The Government should definitely protect holders of American railway stock by providing that the money equivalent of maintenance expenditures, plus a deferred maintenance reserve (which ought to be established) for each year of Government operation, should bear a relationship to the average monetary expenditures of the railways for maintenance for 1915, 1916 and 1917, as indicated by the increased cost of maintenance materials in each year of Government operation, as compared with the average cost for those three years.

Fluctuations in the buying power of the dollar cannot justly be ignored by the Government in either

its rate structure, or maintenance allowance, any more than in the wage scale.

New Power Rules Railroads

One vital fact is apparent today above all others; the scepter in the railroad world has passed out of the hands of the railroads' executives and the bankers who financed them. The American people control the situation through their political representatives, and they will determine the whole course of the future. The burden of right decision lies with them, and they will suffer, or prosper, in accordance with the wisdom shown.

No class of people will exercise so powerful an influence in reaching this decision as the shippers; they must learn, if they have not learned already, that the thing of most vital importance to them is getting their goods to market. The rates at which this service is rendered are incidental to having such service prompt and adequate. The long struggle of the shippers to hold down rates in defiance of the economic trend of the times, and the obvious necessities of the railroad situation, has worked the undoing of the shippers, as well as of the railroads, and they are suffering under the situation they themselves have largely caused. To serve their own ends in the future, they must take a constructive attitude toward the transportation question, and lend a hand in the successful solution of the problem.

As evidence that the shippers of the country prefer an extension of facilities to a continuation of the fight for lower rates may be cited the fact that there was comparatively little opposition on the part of the shippers to the increase asked by the railroads in the original and supplemental 15 per cent. rate cases.

Under the great pressure of the situation the Commission was finally persuaded to allow some increases in rates, but most of them came too late to do any good or to have any effect on stimulating railroad credit.

A lack of understanding and vision on the part of the Interstate Commerce Commission and a too ready yielding to political sentiment have rendered it not the constructive friend of transportation which it should be, but transportation's fearful, hectoring keeper.

It is obvious that we should adopt a definite, comprehensive and adequate policy for developing our railroad extensions, a policy based upon definite, determining factors. Our railroads must keep pace with our industrial expansion; it is imperative that this relationship be strictly maintained. Our transportation facilities must not be outstripped by the growth of our population; they must, in fact, respond fully to the increasing needs of our people. In other words, if we would avoid a repetition of the economic strain through which we have just passed as a consequence of the transportation situation, our railway

extension policy must be directly predicated upon the increases in our population and our business.

Facing the New Order

It seems very certain that from the present plan or coördinated, centralized operation, with its many savings and added efficiencies made possible by Government control, there will be no reversion to the old system of competitive private ownership and conflicting regulation.

If not that, then what do we face? On every hand we hear the prophecy made that the present control of the railroads by the Government is but the first step toward Government ownership, and that once unified under Government direction, the railroads will never be "unscrambled." It is argued that when the economies thus made possible are achieved, neither the railroad owner, nor user, nor worker, will wish to return to the old order.

Failures in Public Ownership

But the fact may be boldly stated at this point that in no country in the world where Government ownership of railroads has been attempted has it been successful, with the single exception of Prussia, where, under the arbitrary mandates of a military autocracy, some degree of efficiency and profit has been secured. Further, it may be stated that in

no important instance has the experience of our own Government in business operation been such as to warrant the conclusion that such activity could be profitably extended. Still further, it can be maintained that there is a sufficient majority of failures in public ownership of other public utilities in this country clearly to demonstrate its wastefulness and inefficiency under our present form of Government, and at our present stage of political progress.

The privately owned railroads of the United States have the lowest freight rates, the lowest capitalization per mile, the greatest operating efficiency and pay the highest wages of any railroads in the world.

What is the Solution?

If private ownership has failed, both when unregulated, and when over-regulated, and Government ownership gives no promise of success, what plan offers for meeting the situation?

Various suggestions of a central Federal corporation, regional holding companies, Government guarantees and plans calling for profit sharing with the Government above a fixed return have been frequently made. Somewhere along this line of thought lies a rational solution. It is very certain that the old days of enforced competition, anti-trust laws, anti-pooling laws, conflicting State regulation,

wasteful competition, duplication of service, would not be permitted by a public alive to its own interests.

It seems equally certain that Government ownership would not be permitted if the public were equally alive to its real interests. The hour has arrived for the suggestion of some plan which will be ready for adoption when the crisis of war has passed, and the pressing needs of business demand the return of normal business conditions, and the operation of economic, rather than martial law. Somewhere, within the meaning of the words "coöperation" and "partnership" lies the answer. The public interest in transportation is paramount and must be protected, but public interest and private interest need not be in conflict if intelligently regarded.

Regional companies representing both private and public capital under private operation with Governmental participation in the management and earnings above a just guarantee would seem to assure the necessary extension of railroad facilities. In unity of interest and understanding progress towards the desired goal should be possible.

Federal Control of Railroads Law

Foreword

UNDER the Act of Congress approved August 29, 1916, the President was empowered to take possession and assume control of any system or systems of transportation and to utilize them to the exclusion, as far as necessary, of all other traffic for the transportation of troops, war material, and equipment, and for other needful and desirable purposes connected with the prosecution of the war. Acting under the authority vested in him by this Act, the President on December 26, 1917, issued a proclamation assuming control of all systems of transportation located wholly or in part within the boundaries of the continental United States, such control to become effective after twelve o'clock noon December 28, 1917, except for the purpose of accounting, the control of which began at midnight on December 31, 1917.

By this proclamation, the control and operation of the railroads was delegated to the Honorable William G. McAdoo, Director General of Railroads. This authority has been extended to the provisions of the Act approved March 21, 1918.

Simultaneously with the issuance of his proclamation of December 26, 1917, the President made public a statement showing the reasons and necessity for

Federal Control and announcing his purpose to request Congress to pass such legislation as would be necessary to protect the rights and interests of the owners and creditors of the systems. The President's statement in part reads as follows:

"The public interest must be first served and, in addition, the financial interests of the Government and the financial interests of the railways must be brought under a common direction. The financial operations of the railways need not then interfere with the borrowings of the Government, and they themselves can be conducted at a greater advantage. Investors in railway securities may rest assured that their rights and interests will be as scrupulously looked after by the Government as they could be by the directors of the several railway systems. Immediately upon the reassembling of Congress I shall recommend that these definite guarantees be given: First, of course, that the railway properties will be maintained during the period of Federal control in as good repair and as complete equipment as when taken over by the Government, and, second, that the roads shall receive a net operating income equal in each case to the average net income of the three years preceding June 30, 1917; and I am entirely confident that the Congress will be disposed in this case, as in others, to see that justice is done and full security assured to the owners and creditors of the great systems which the Government must now use under its own direction or else suffer serious embarrassment."

The President in his message of January 4, 1918, recommended to Congress the enactment of such legislation, and the present law regulating Federal control was passed and approved by the President on March 21, 1918.

Synopsis

The law provides for the operation of the properties of the carriers, and for compensation for the use of their property while under Federal control (Sec. 1). It is expressly declared, however, to be emergency legislation, which is enacted to meet war conditions, and which is not to be construed as expressing the future policy of the Government concerning the ownership, control or regulation of carriers or the method or basis of their capitalization (Sec. 16).

Railroads Under Federal Control

Every railroad not controlled or operated by any other carrier, and which has heretofore competed with a railroad system over which the President has taken control, or which connects with such railroad, and is engaged in general transportation as a common carrier, is considered as under Federal control and entitled to the benefit of all the provisions of this law. Federal control, however, does not extend to street, or interurban electric railways, having as their principal source of operating income, urban, suburban, or local interurban passenger traffic, or the sale of power, heat or light (Sec. 1).

Compensation

Two methods of determining just compensation for the use of the properties of carriers, are provided for

in the law, first, by agreement with the carrier, and, second, in case agreement is not made, by adjudication of boards of referees appointed by the Interstate Commerce Commission, whose decisions are subject to review by the Court of Claims of the United States (Secs. 1 and 2).

Compensation by Agreement

The President is authorized to make an agreement with, and guarantee to any carrier under Federal control, making operating returns to the Interstate Commerce Commission, that for each year or fractional part of a year during the period of Federal control, such carrier shall receive as just compensation an annual sum, payable in installments, such sum to be equivalent, as nearly as may be, to the average annual railway operating income for the three year period ending June 30, 1917 (Sec. 1).

The average annual operating income will be ascertained by the Interstate Commerce Commission and certified by it to the President. This certification will be conclusive of the amount for the purposes of the agreement (Sec. 1).

Excess Revenue

Any railway operating income, accruing during the period of control, in excess of such just compensation, will remain the property of the United States (Sec. 1).

Equipment and Joint Facility Rents

In computing operating income, debits and credits arising from accounts, called in the monthly reports to the Interstate Commerce Commission, equipment and joint facility rents, are to be included. Debits and credits, however, arising from the operation of street electric passenger railways, including those known as interurbans, which are not at the time of the agreement under Federal control, are to be excluded (Sec. 1).

Leased Lines

If any lines were acquired by or consolidated with a railroad or system between July 1, 1914, and December 31, 1917, inclusive, and separate operating returns were not made to the Interstate Commerce Commission after acquisition or consolidation, the total operating income of such carrier for three years ending June 30, 1917, and the total operating income of the acquired lines for the period beginning July 1, 1914, and ending on the date of acquisition or on December 31, 1917, whichever is earlier, shall be added together before the average is computed (Sec. 1).

Payment of Taxes

The agreement shall provide:

(1) That any Federal taxes under the Act of October 3, 1917, or Acts supplementing or amending

it, known as war taxes, assessed for any part of the period of Federal control, beginning January 1, 1918, shall be paid by the carrier out of its own funds or charged against or deducted from its just compensation.

(2) That other taxes assessed under Federal or other governmental authority, for any part of the period of Federal control, on the property used or on the right to operate as a carrier, or on the revenue derived from operation, shall be paid out of revenue derived from operations while under Federal control, except assessments for public improvements or taxes on property under construction, and chargeable under the classification of the Interstate Commerce Commission, to investment in road and equipment.

(3) That all taxes assessed as above, for the period prior to January 1, 1918, whenever levied or payable, shall be paid by the carrier out of its own funds or charged against or deducted from its just compensation (Sec. 1).

Depreciation, Renewals and Additions

The agreement shall also contain adequate provisions for the maintenance, repair, renewal and depreciation of the property, the creation of necessary reserve funds and for any accounting and adjustments of charges and payments, during and at the end of Federal control, which may be necessary in order

to return the property of each carrier in as substantially good repair, and with as complete equipment as it had at the beginning of Federal control, and, in order also that the United States may, by deductions from the just compensation provided for or by other means, be reimbursed for any of the above expenses of the property not justly chargeable to it. In making such accounting and adjustments, the amounts expended or reserved by each carrier for maintenance, repairs, renewals and depreciation during the three years ended June 30, 1917, and the condition at the beginning and at the end of the Federal control, and any other pertinent facts, are to be considered (Sec. 1).

Miscellaneous Provisions

The President is authorized to make all other reasonable provisions not inconsistent with this law, or of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August 29, 1916, that he deems necessary or proper for the determination of the mutual rights and obligations of the parties arising out of such Federal control (Sec. 1).

Abnormal Return for Three Years

If the President finds that during a substantial portion of the three years ended June 30, 1917, any car-

rier's condition, because of non-operation or receivership, or because recent expenditures for additions, improvements, or equipment were not fully reflected in the operating income, or because of any undeveloped or abnormal conditions, was so exceptional as to make the basis of earnings here provided for plainly inequitable as a fair measure of just compensation, he may make an agreement for such amount of compensation as he finds just (Sec. 1).

Carriers to Accept Provisions of Act

The agreement shall provide that the carrier accept all the terms and conditions of the act, and any regulations or orders made by the President under its authority or under authority of that portion of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August 29, 1916, empowering the President in time of war to take possession of, assume control over and utilize systems of transportation (Sec. 1).

Compensation in Case Agreement is Not Made

If no agreement is made, or pending the execution of one, the President may pay to any carrier, in reasonable installments, while under Federal control, an annual amount not exceeding ninety percentum of

the estimated annual amount of just compensation, the carrier being remitted to its legal rights and remedies, as stated in the following paragraph, for any balance claimed to be due. Any further amount later found due shall bear interest at the rate of six per centum per annum. The acceptance of any benefits as here provided, constitutes an acceptance by the carrier of all the provisions of the law, and obligates it to pay to the United States with interest as above, from a date fixed in the proceedings, the amount by which the sums received exceed the sum found due (Sec. 2).

Claims for Compensation

All claims for just compensation, not adjusted by agreement, shall, on application by the President or any carrier, be submitted to boards consisting of three referees appointed by the Interstate Commerce Commission, its members and official force being eligible for service without additional compensation. These boards are authorized to summon witnesses, require the production of records, books, correspondence, documents, memoranda, and other papers, view properties, administer oaths, and hold hearings wherever the convenience of the parties may require (Sec. 3).

In case of disobedience to a subpoena, the boards may invoke the aid of any District Court of the United States in requiring the attendance and testi-

mony of witnesses and the production of documents. These courts, within their jurisdiction, may in cases of refusal to obey the subpoena, issue an order requiring appearance before the boards or the production of documents, or the giving of evidence touching the matter in question. Failure to obey this order may be punished as contempt. Cases may be heard separately or together, or by classes, by such boards as the Interstate Commerce Commission in the first instance, or any board of referees to which any cases are referred, may determine. Full hearings shall be given, and the boards will report, as soon as practicable in each case to the President, the just compensation determined upon, calculated on an annual basis. The report shall be in convenient form for making an agreement as above described. The President is authorized to contract with the carrier for just compensation upon a basis not in excess of that reported by the board, and may include therein provisions similar to those authorized in the agreement provided for by this law. If such agreement is not then made, the United States or the carrier may file a petition in the Court of Claims to determine the amount of just compensation, in which proceedings the report of the referees shall be presumptive evidence of the just compensation and of the facts stated. Proceedings in the Court of Claims shall be given precedence and expedited in every possible way (Sec. 3).

Additional Interest on Additions and Betterments

To the just compensation, determined by agreement or by adjudication by the Court of Claims, shall be added an amount reckoned at a reasonable rate per centum, fixed by the President, upon the cost of any additions and betterments, less retirements, and upon the cost of road extensions to the property made by the carrier with the approval of, or by the order of the President, while the property is under Federal control (Sec. 4).

Payment of Dividends

Carriers while under Federal control shall not, without the approval of the President, declare or pay dividends in excess of the regular rates during the three years, ended June 30, 1917. If carriers have paid no regular dividends or no dividends during this period, they may, with the approval of the President, pay dividends at rates determined by the President (Sec. 5).

The Revolving Fund

The sum of \$500,000,000 is appropriated, which, together with any funds available from the operating income of the carriers, may be used by the President as a revolving fund to pay the expenses of Federal control, and so far as necessary, the amount of just compensation. From these funds, the President will also provide terminals, motive power, cars and other

necessary equipment, which will be used and accounted for as he may direct and be disposed of as Congress may provide (Sec. 6).

Additions, Betterments and Extensions by the President

The President may order any carrier to make additions, betterments, or road extensions, and to provide terminals, motive power, cars, and other equipment in connection with its property, which may be desirable for war purposes or for the interest of the public. From the revolving fund, he may advance to the carrier all or any part of the expense of additions, betterments or road extensions, and provide terminals, motive power, cars and other necessary equipment ordered and constructed by the carrier or by the President. These advances are chargeable against the carrier and bear interest at the rates and are payable on the terms decided upon by the President (Sec. 6).

Claim for Losses

Any loss claimed by a carrier by reason of any additions, betterments, or road extensions, so ordered and constructed, may be determined by agreement between the President and the carrier. If no agreement is reached, the amount of loss shall be ascertained and determined by the United States Court of Claims (Sec. 6).

Operation of Canals

The President may expend any amount from the revolving fund that he deems desirable for the use and operation of canals or for the purchase, construction, and operation of boats and other transportation facilities on inland, canal and coastwise waterways. In the operation and use of these facilities, he may employ any agencies and make any contracts that he deems necessary in the public interest (Sec. 6).

Financing of Roads

To provide funds requisite for maturing obligations or for other proper expenditures or for reorganizing railroads in receivership, carriers may during the period of Federal control, issue bonds, notes, equipment trust certificates, stock, and other forms of securities, secured or unsecured by mortgage, of which the President approves and deems consistent with the public interest. Out of the revolving fund, the President may purchase for the United States, such securities, at prices not exceeding par, and may sell them whenever he deems it desirable, at prices not less than the cost. Securities so purchased, shall be held by the Secretary of the Treasury, who, under the direction of the President, shall represent the United States in all such matters in the same manner as a private holder. The President, each year, as soon as practicable after January 1st, shall cause a

detailed report for the preceding calendar year, to be submitted to Congress, of receipts and expenditures in the purchase and sale of securities and in the operation and maintenance of transportation facilities on inland, canal and coastwise waterways (Sec. 7).

Delegation of Powers

The President may execute any powers granted to him in this law through any agencies he may name; fix reasonable compensation for the performance of services in connection with the same; avail himself of the services of members and employes of the Interstate Commerce Commission; and call upon any department, commission or board of the Government for any services he deems expedient. Officials or employes of the United States shall receive no additional compensation for such services, except as now permitted by law (Sec. 8).

Suits Against Carriers

While under Federal control, carriers are subject to all laws and liabilities as common carriers, whether arising under Federal, State or common law, except in so far as inconsistent with the provisions of this law, or other laws applicable to Federal control, or any order of the President. Carriers may sue and be sued at law and in equity, and judgments

rendered in such suits. No defense that the carrier is an instrumentality or agency of the Federal Government may be made to any suit. Carriers may not transfer to a Federal court, any actions instituted by or against them, which were not transferable prior to the Federal control of such carrier, and any action, which has heretofore been transferred because of Federal control or any Act of Congress or official order or proclamation relating thereto, upon motion of either party, may be removed to the court in which originally instituted. No process, mesne or final, shall be levied against any property under Federal control (Sec. 10).

Change of Rates

Whenever during the period of Federal control, he deems it necessary, the President may initiate rates, classifications, regulations and practices by filing the same with the Interstate Commerce Commission, and such rates, classifications, regulations and practices shall not be suspended, pending final determination. All rates, classifications, regulations and practices so made shall take effect at such time and upon such notice as the President directs and must be reasonable and just. The Interstate Commerce Commission, upon complaint, however, shall grant full hearing and make investigation as to the justice and reasonableness of so much of any such order as establishes or changes any rate, classification, regulation or practice of any carrier under Federal con-

trol, and may consider all facts and circumstances existing at the time when made. In determining such questions, due consideration shall be given to the fact that the transportation systems are not in competition, but are being operated under a unified and coördinated national control.

After full hearing, the Commission may make such findings and orders as are authorized by the Act to regulate commerce, as amended, the findings and orders being enforced as provided in that Act.

If, however, the President certifies to the Interstate Commerce Commission that in order to defray the expenses of Federal control, fairly chargeable to operating expenses, and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers operating as a unit, it is necessary to increase the operating revenues, the Interstate Commerce Commission in determining the justness and reasonableness of any rate, fare, classification, regulation or practice shall give consideration to the President's finding, together with any recommendations he may make (Sec. 10).

Money the Property of the United States

Money and other property derived from operation during Federal control are the property of the United States. Unless otherwise directed by the President, however, such money shall not be covered

into the Treasury, but shall remain in the custody of the same officers of the carriers, and be accounted for in the same manner and form as before Federal control. Disbursements shall be made, without further appropriation, in the same manner as before Federal control, and for such purposes as under the Interstate Commerce Commission's classification of accounts in force on December 27, 1917, are chargeable to operating expenses or to railway tax accruals and for such other purposes in connection with Federal control as the President directs. War Income Taxes and Excess Profits Taxes under the Act entitled "An Act to provide revenue to defray war expenses, and for other purposes," approved October 3, 1917, or any act in addition thereto, however, are to be paid by the carrier out of its own funds. If Federal control begins or ends during the tax year for which the taxes chargeable to railway tax accruals are assessed, taxes for such year are to be apportioned to the date of the beginning or ending of Federal control, and disbursements made only for that portion of such taxes as is due for the part of the tax year which falls within the period of Federal control (Sec. 12).

Control of Funds by President

At proper periods, the President shall order the closing of the books and any net income shall be covered into the Treasury of the United States to the credit

of the revolving fund created by this law. If revenues are insufficient to meet disbursements, the deficit shall be paid out of the revolving fund as the President directs (Sec. 12).

Pending Cases

All cases pending in the courts of the United States, affecting carriers, brought under the Act to regulate commerce, approved February 4, 1887, as amended and supplemented, including the commodities clause, or under the Act to protect trade and commerce against unlawful restraints and monopolies approved July 2, 1890, and amendments thereto, shall proceed to final determination as soon as may be, as though the United States had not assumed control of transportation systems. The court, however, having jurisdiction may, upon application of the United States, stay execution of final judgment or decree until such time as it deems proper (Sec. 13).

Relinquishment of Federal Control

Federal control shall continue during the period of the war and for a reasonable time thereafter, not exceeding twenty-one months from the date of the President's proclamation of the exchange of ratifications of the treaty of peace. The President in his discretion, may prior to July 1, 1918, relinquish control over all or any part of a system of transportation, or at any time during the period of Federal

control, may agree with the owners to do so, or may relinquish all systems of transportation under Federal control at any time he deems such action desirable. No right to compensation accrues to the owners from the date of such relinquishment (Sec. 14).

Conflict of State Laws

The law is not to be construed to amend, repeal, impair or affect existing laws or powers of the States in relation to taxation or lawful police regulations except where such laws, powers or regulations may affect the transportation of troops, war materials, government supplies, or the issue of stocks and bonds (Sec. 15).

Penalties for Violation

Every person or corporation, whether a carrier or a shipper, or any receiver, trustee, lessee, agent or person acting for or employed by them, who knowingly violates or fails to observe any of the provisions of this Act, or who knowingly interferes with or impedes the possession, use, operation or control of any carrier or its property, when taken over by the President, or who knowingly violates any of the provisions of any order or regulation made in pursuance of this Act, is guilty of a misdemeanor, and upon conviction may be punished by a fine of not more than \$5,000, and, if a person, by imprisonment for not more than two years, or both. Each independent transaction, amounting to a violation of any

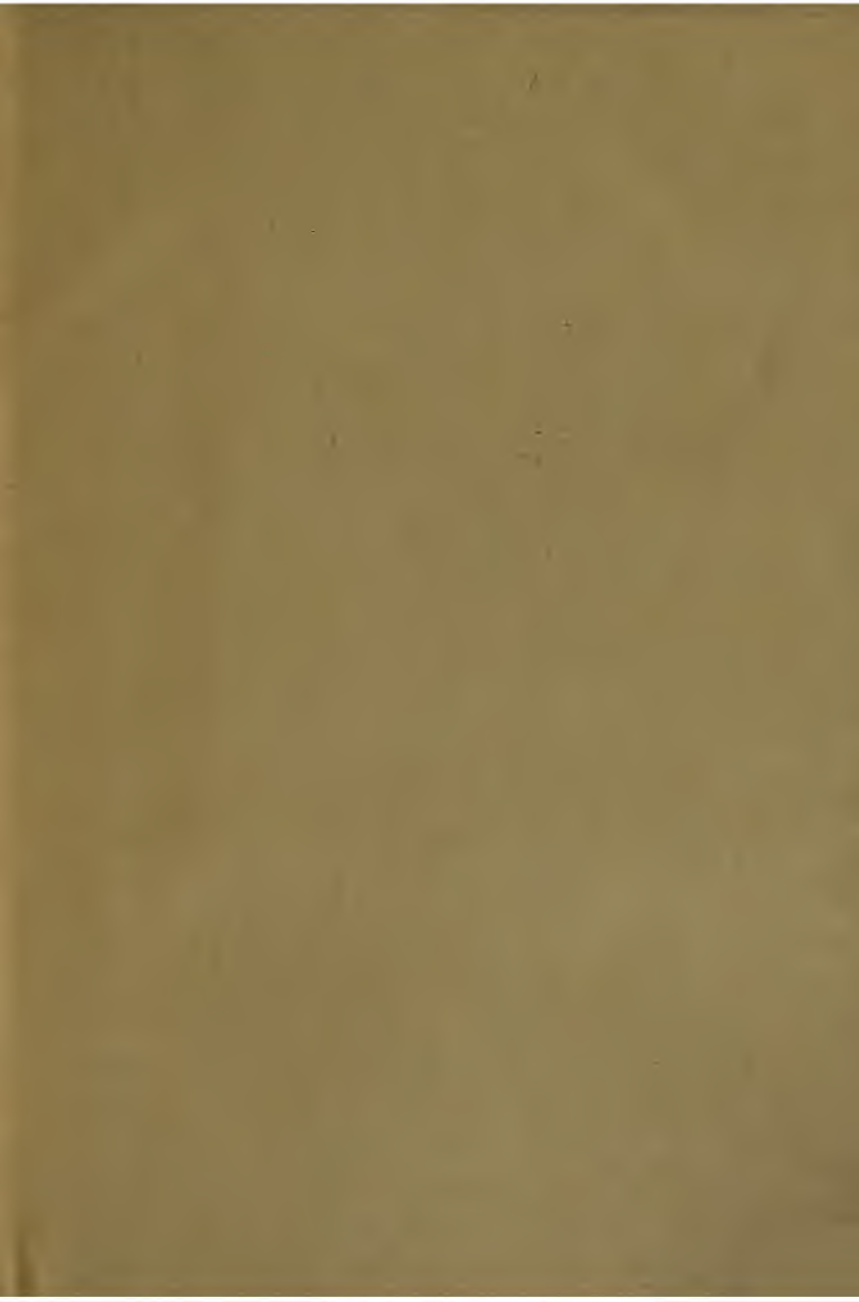
of the provisions of this Act or any order entered in pursuance thereof, constitutes a separate offense.

For taking or converting to his own use or embezzling money or property derived from or used in connection with the possession, use or operation of the carriers, the criminal statutes of the United States, and those of the various States shall apply to all officers, agents and employes engaged in the transportation service, while under Federal control, to the same extent as to persons employed in the regular service of the United States.

Violations of this Act or any order entered under its authority shall be prosecuted in the district courts of the United States by the Attorney General, in accordance with the procedure for the collection and imposing of fines and penalties now existing in these courts (Sec. 11).

Effect on Provisions of Other Acts

The provisions of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August 29, 1916, remains in force and effect except as expressly modified and restricted by this law. The President is also granted any further powers necessary or appropriate to give effect to those powers herein and heretofore conferred. Carriers, which later come under Federal control, are subject to the provisions of this law (Sec. 9).





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